

§ 115.2

13 CFR Ch. I (1–1–10 Edition)

as amended. Subpart A of this part contains regulations common to both the program requiring prior SBA approval of each bond guarantee (the Prior Approval Program) and the program not requiring prior approval (the PSB Program). Subpart B of this part contains the regulations applicable only to the Prior Approval Program. Subpart C of this part contains the regulations applicable only to the PSB Program.

§ 115.2 Savings clause.

Transactions affected by this part 115 are governed by the regulations in effect at the time they occur.

Subpart A—Provisions for All Surety Bond Guarantees

§ 115.10 Definitions.

Affiliate is defined in part 121 of this chapter.

Ancillary Bond means a bond incidental and essential to the performance of a Contract for which there is a guaranteed Final Bond.

Applicable Statutory Limit means the maximum amount of any Contract, or Order, for which Section 411(a) of the Small Business Investment Act, as amended from time to time, authorizes the SBA to guarantee, or commit to guarantee, a Bid Bond, Payment Bond, Performance Bond, or Ancillary Bond. The Applicable Statutory Limit from February 17, 2009 through September 30, 2010, is \$5,000,000; provided, however, that during this period the Applicable Statutory Limit is \$10,000,000 for a particular Contract or Order if a contracting officer of a Federal agency certifies in writing that a guarantee in excess of \$5,000,000 is necessary.

Bid Bond means a bond conditioned upon the bidder on a Contract entering into the Contract, and furnishing the required Payment and Performance Bonds. The term does not include a forfeiture bond unless it is issued for a jurisdiction where statute or settled decisional law requires forfeiture bonds for public works.

Contract means a written obligation of the Principal, including an Order, requiring the furnishing of services, supplies, labor, materials, machinery, equipment, or construction. A Contract

must not prohibit a Surety from performing the Contract upon default of the Principal. A Contract does not include a permit, subdivision contract, lease, land contract, evidence of debt, financial guarantee (e.g., a contract requiring any payment by the Principal to the Obligor), warranty of performance or efficiency, warranty of fidelity, or release of lien (other than for claims under a guaranteed bond). It includes a maintenance agreement of 2 years or less which covers defective workmanship or materials only. With SBA's written approval, it can also include a longer maintenance agreement covering defective workmanship or materials, or a maintenance agreement covering something other than defective workmanship or materials. To qualify for such approval, the agreement must be ancillary to the Contract for which SBA is guaranteeing a bond, must be required to be performed by the same Principal, and must be customarily required in the relevant trade or industry.

D/SG means SBA's Director, Office of Surety Guarantees.

Execution means signing by a representative or agent of the Surety with the authority and power to bind the Surety.

Final Bond means a Performance Bond and/or a Payment Bond.

Imminent Breach means a threat to the successful completion of a bonded Contract which, unless remedied by the Surety, makes a default under the bond appear to be inevitable.

Investment Act means the Small Business Investment Act of 1958 (15 U.S.C. 661 *et seq.*), as amended.

Loss has the meaning set forth in § 115.16.

Obligee means:

(1)(i) In the case of a Bid Bond, the Person requesting bids for the performance of a Contract; or

(ii) In the case of a Final Bond, the Person who has contracted with a Principal for the completion of the Contract and to whom the primary obligation of the Surety runs in the event of a breach by the Principal.

(2) In either case, no Person (other than a Federal department or agency) may be named co-Obligee or Obligor on a bond or on a rider to the bond unless